

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

Plaintiff,

-against-

ORDER
03-CV-0578 (JS) (ARL)

HOWARD SALTEN and MARGARET SALTEN, and
if not living their heirs-at law, if
any, PATRICIA SALTEN also known as
Patricia Lynch, and JOHN DOE #1
through #10,

Defendants.

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APPEARANCES

For Plaintiff: Thomas A. McFarland, Esq.
United States Attorney's Office
Eastern District of New York
610 Federal Plaza
Central Islip, NY 11788

For Defendants:
Howard Salten Howard Salten, pro se
P.O. Drawer 5066
Southampton, NY 11969

For remaining Defendants No appearances.

SEYBERT, District Judge:

Pending before the Court is Plaintiff United States of America's (the "Government") motion to amend its Complaint pursuant to Rule 15(a)(2) of the Federal Rules of Civil Procedure to substitute a new party for Defendant Margaret Salten.¹ This case, however, is now closed as judgment was

¹ Also pending is pro se Defendant Howard Salten's request for an extension of time to oppose the Government's motion.

entered in favor of the Government on April 19, 2007, and the Second Circuit has explicitly held that "[a] party seeking to file an amended complaint postjudgment must first have the judgment vacated or set aside pursuant to FED. R. CIV. P. 59(e) or 60(b)." Ruotolo v. City of N.Y., 514 F.3d 184, 191 (2d Cir. 2008); see also Williams v. Citigroup Inc., 659 F.3d 208, 212-13 (2d Cir. 2011); Nat'l Petrochem. Co. of Iran v. M/T Stolt Sheaf, 930 F.2d 240, 245 (2d Cir. 1991). Thus, as the Government is not seeking to vacate the previously entered judgment, the Court may not entertain the pending motion to amend. See Nat'l Petrochem., 930 F.2d at 245. Accordingly, the Government's motion is DENIED.

Counsel for the Government, Thomas A. McFarland, Esq., is hereby ORDERED to serve a copy of this Order on Defendants and to file proof of service within seven (7) days.

The Clerk of the Court is directed to (1) terminate the appearance of Mr. McFarland on behalf of Defendant Howard Salten, which appears to have been entered in error, and (2) terminate Mr. Salten's motion for an extension, which is now moot.

SO ORDERED.

/s/ JOANNA SEYBERT
Joanna Seybert, U.S.D.J.

Dated: April 29, 2013
Central Islip, NY